

underlying its narrative description remain a mystery, and thus neither the Commission nor commenters can possibly verify Pacific's figures.

In addition, neither SWBT nor Pacific even attempts to explain why they must charge \$269.91 (Pacific) and \$351.56 (SWBT) each time they process a bill for a default query charge. All or virtually all customers of an ILEC's "default query" services will also be purchasing exchange access from that ILEC on a regular basis in order to terminate interexchange calls in its territory. SWBT and Pacific therefore in most cases already will have established an account with those carriers, and therefore should not need to impose any non-recurring charges relating to billing. In all events, there is no basis to impose this so-called "nonrecurring" charge on a monthly basis. After a carrier has been billed during one month for default LNP query service, SWBT and Pacific cannot plausibly contend that they must set up billing from scratch in each subsequent month. AT&T submits that it should be dispositive to the Commission's analysis of this issue that neither Ameritech nor Bell Atlantic proposes similar non-recurring charges -- indeed, Ameritech eliminated a similar charge from its tariff during the Commission's previous investigation, observing that it had identified "ways to mechanically identify and bill for default traffic."<sup>36</sup>

VI. THE COMMISSION SHOULD REJECT AMERITECH'S PROPOSED BLOCKING STANDARDS AND INFORMATION DISCLOSURE REQUIREMENTS

Ameritech responds to the Designation Order's requirement (§12) that it provide additional support for its proposal to block prearranged traffic as well as default traffic first by

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<sup>36</sup> See Reply Comments of Ameritech, filed February 27, 1998, p. 14 in Number Portability Query Services, CC Docket No. 98-14.

adverting yet again to the very tariff filing that the order found inadequate.<sup>37</sup> Ameritech then offers a brief explanation of its proposal that adds nothing substantial to its prior submissions on this subject. As AT&T showed in its comments on Ameritech's previous LNP query tariff, the Commission's LNP Second Report and Order<sup>38</sup> does not permit carriers to block prearranged queries.<sup>39</sup> Further, Ameritech does not -- and simply cannot -- explain why it, alone among the carriers that have filed LNP query tariffs, must block prearranged query traffic. This crucial fact makes plain that Ameritech's purported concern for network reliability is a sham.

Ameritech also provides a similarly insubstantial, discussion of its proposal to require carriers that seek to purchase its LNP query services to provide rolling, three-month estimates of the volume of traffic they intend to deliver to Ameritech end offices and tandem offices, including total monthly traffic, maximum busy hour volumes, and the Ameritech switch over which they intend to route this traffic.<sup>40</sup> Ameritech's case for this requirement founders at the outset on the same simple -- but fatal -- problem that afflicts its proposal to block prearranged query traffic: No other carrier that has filed an LNP query tariff has sought to impose a similar requirement. Ameritech thus must argue that it alone recognizes the purportedly grave threat LNP poses to network reliability in the absence of detailed demand forecasting. It cannot carry this immense burden.

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<sup>37</sup> See Ameritech, pp. 11-12.

<sup>38</sup> Second Report and Order, Telephone Number Portability, 12 FCC Rcd. 12281.

<sup>39</sup> See Exhibit 1, pp. 16-18.

<sup>40</sup> See Designation Order, ¶ 13.

Ameritech's direct case merely states in a variety of ways that it believes it should be permitted to demand competitively sensitive data from its direct competitors. At bottom, Ameritech claims only that it believes it can better predict demand if it obtains detailed forecasts -- not that it must have those data (which no other carrier has sought) in order to provide query services. It is clear (and Ameritech does not dispute) that if competing carriers must provide Ameritech with forecasts of their anticipated call volumes on an end office-by-end office basis three months in advance, then Ameritech will easily be able to determine the areas its competitors plan to target with promotions or marketing campaigns. Ameritech has offered nothing that shows that it must have detailed demand forecasts in order to provide LNP query service. Accordingly, there is no basis to require CLECs to, in effect, give Ameritech advance notice before attempting to compete with that BOC within its local monopoly territory.

**VII. THE COMMISSION'S LNP ORDERS PROHIBIT CHARGES FOR QUERIES  
UNLESS A CALL TERMINATES TO AN END OFFICE FROM WHICH AT LEAST  
ONE NUMBER HAS BEEN PORTED**

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In this proceeding Bell Atlantic and SBC continue their quest to force other carriers to purchase utterly unnecessary LNP queries by tariffing an LNP query charge that would apply to every call delivered unqueried to an NXX in which LNP was available, without regard to whether even a single number had in fact been ported in that NXX.<sup>41</sup> AT&T responded to these arguments at length in two previous ex parte filings,<sup>42</sup> which are attached to this opposition as

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<sup>41</sup> See Bell Atlantic, pp. 7-9; SBC, pp. 19-27. The Designation Order addresses this issue in ¶ 14.

<sup>42</sup> Letter from Frank S. Simone, Government Affairs Director, AT&T, to A. Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission, January

Exhibits 3 and 4, and so will not repeat all of those contentions here. SBC's and Bell Atlantic's latest arguments boil down to two claims, both of which fail.

First, SBC offers the incredible assertion that the Commission has already decided this issue in its favor. In support of this absurd claim, SBC cites a single sentence from the "Background" section of the Cost Recovery Order.<sup>43</sup> in which the Commission did not even claim to address -- much less resolve -- the issue of charging for queries on calls to NXXs in which numbers have ported. The Commission's passing reference plainly was not intended to resolve this question. For one, the Commission has long been aware of the controversy surrounding this aspect of LNP queries, and cannot reasonably be presumed to have resolved it without so much as mentioning the competing arguments that have been offered by various parties in its LNP docket and in the prior LNP tariff investigation, because doing so would violate fundamental tenets of administrative law (as the Commission well knows).<sup>44</sup> The Designation Order, which was released more than a month after the Cost Recovery Order, clearly presumes that the issue of querying all LNP-capable NXXs remains unsettled.<sup>45</sup>

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(footnote continued from previous page)

7, 1998 (attached as Exhibit 3); Letter from Frank S. Simone, Government Affairs Director, AT&T, to A. Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission, March 18, 1998 (attached as Exhibit 4).

<sup>43</sup> See SBC, p. 19 (citing Cost Recovery Order, ¶ 15).

<sup>44</sup> See, e.g., International Fabricare Institute v. EPA, 972 F.2d 384, 392 (D.C. Cir. 1992) ("[a] conclusory statement, of course, does not in itself provide the 'satisfactory explanation' required in rulemaking").

<sup>45</sup> See Designation Order, ¶ 14.

Further, SBC's claim that this issue already has been resolved in its favor crumbles upon examination of the Commission's LNP-related orders and rules. In fact, the great weight of Commission pronouncements and industry guidelines presume that queries will only be performed after a number in an NXX has actually ported. For example, the LNP Recon Order observed that:

Under LRN, a unique 10-digit number, or location routing number, is assigned to each central office switch. Carriers routing telephone calls to customers that have transferred their telephone numbers from one carrier to another perform a database query to obtain the location routing number that corresponds to the dialed telephone number. The database query is performed for all calls to switches from which at least one number has been ported.<sup>46</sup>

The LNP Second Report and Order offers a similar description offers a similar description of local number portability.

Carriers routing telephone calls to customers who have ported their telephone numbers from one carrier to another query the local Service Management System (SMS) database to obtain the location routing number that corresponds to the dialed telephone number. This database query is performed for all calls to switches from which at least one number has been ported.<sup>47</sup>

The Commission's rules governing call blocking under LNP also presume that queries are required only for calls to NXXs in which numbers actually have ported:

If a telecommunications carrier transmits a telephone call to a local exchange carrier's switch that contains any ported numbers, and the telecommunications carrier has failed to perform a database query to determine if the telephone number has been ported to another local exchange carrier, the local exchange carrier may block the unqueried call only if performing the database query is likely to impair network reliability.<sup>48</sup>

<sup>46</sup> First Memorandum Opinion and Order on Reconsideration, Telephone Number Portability, 12 FCC Rcd. 7236, 7283, 7346-47 (1997), ¶ 6 (emphasis added) ("LNP Recon Order").

<sup>47</sup> LNP Second Report and Order, ¶ 8 (emphasis added).

<sup>48</sup> 47 C.F.R. § 52.26(a)(3) (emphasis added).

The Commission also implicitly recognized that queries need only be performed after at least one number ports when it defined a "default routed call" in the LNP Second Report and Order.

A 'default routed call' situation would occur in a Location Routing Number system as follows: when a call is made to a telephone number in an exchange with any ported numbers, the N-1 carrier (or its contracted entity) queries a local Service Management System database to determine if the called number has been ported.<sup>49</sup>

If a default routed call situation can only exist after a number has ported in an NXX, then by definition a LEC may not charge an N-1 carrier for a default query when that N-1 carrier delivers an unqueried call to an NXX in which no numbers have yet been ported. In addition, as AT&T demonstrated in the attached Exhibits, the NANC Process Flows adopted by the Commission in its LNP Second Report and Order make clear that queries need only be performed when at least one number has been ported in an NXX.<sup>50</sup> These and other references in the Commission's prior orders assume that N-1 carriers need not make queries unless and until at least one number has ported in an NXX.

The most devastating flaw in Bell Atlantic's and SBC's approach to LNP queries is the simple and indisputable fact that it would require queries to be performed for no valid purpose -- and would charge carriers a fee for this bogus "service."<sup>51</sup> Such a result cannot possibly

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<sup>49</sup> LNP Second Report and Order, ¶ 76 (emphasis added).

<sup>50</sup> See Exhibit 1, pp. 7-9; Exhibit 3; and Exhibit 4 for a full discussion of the NANC Process Flows and their implications for LNP query charges.

<sup>51</sup> In addition, as noted above, both SBC and Bell Atlantic apparently intend to charge for queries even on intraoffice calls, for which no query is necessary even after the first number ports in an NXX. See infra, Section IV

comport with the "just and reasonable" standard of § 204. The bottom line is this: until a number actually ports in an NXX, no LNP query is necessary to properly route calls to that NXX.

Indeed, the Designation Order recognizes that there is no need to perform queries in NXXs in which no number has been ported.

Bell Atlantic, Pacific Bell, and Southwestern Bell plan to assess a default query charge on unqueried calls delivered to any NXX designated as number portable. We understand this to mean that these carriers propose to assess the default query service charge for calls to NXXs where the carrier has the capability to query, and may actually be querying all calls, but does not have a need to do so in order to correctly route calls because no number in fact has been ported from that NXX. We designate as an issue for investigation whether imposing query charges on calls to number portable NXXs is reasonable given the absence of a need to query if no number has ported from an NXX.<sup>52</sup>

Moreover, Bell Atlantic and SBC admit that that they do not need to perform queries in NXXs in which no numbers have ported in order to properly route calls. Bell Atlantic's direct case states (p. 4) that:

When a carrier delivers an unqueried call to an end office, the end office suspends call processing and unlike a tandem switch, checks its internal line translation information to determine whether the called number is in the switch. If this internal information indicates the called number is still in the switch, then normal call processing resumes, and the call is completed within the switch.

Even SBC admits (p. 20), albeit disingenuously, that it need not perform such queries in order to properly route calls: "It is true that calls to NXXs without a ported number will not always require a query in order to route correctly." SBC does not elaborate on the meaning of "will not always require a query." However, to the best of AT&T's knowledge, the proper routing of calls

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<sup>52</sup> Designation Order, ¶ 14 (emphasis added).

to NXXs without ported numbers will never require an LNP query -- indeed, if no numbers have ported, then a query cannot return useful information.<sup>53</sup>

Second, both SBC and Bell Atlantic attempt to argue that performing queries only on calls to NXXs in which at least one number had ported would be inefficient (or even impossible). As a preliminary matter, the example of Ameritech demonstrates conclusively that it is technically feasible to charge for LNP queries in the manner AT&T proposes. That BOC clarified in the prior LNP tariff investigation that it intends to charge for queries only after the first number ports in an NXX.<sup>54</sup>

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<sup>53</sup> If the calling party dials a number that is not being used in an NXX in which no number has ported, the end office switch will perform a query in order to determine whether the number in question has been ported off the switch. This circumstance will occur only rarely, and when it does, the LNP query that results provides no information that is necessary, or even useful, in routing or completing the call.

In addition, if a carrier has set a tandem switch to query all calls passing through it, then a call to an NXX with no ported numbers that passes through that tandem will generate a query. In that situation, however, the query again returns no necessary or useful information; and, in all events, a LEC's decision to query all calls at the tandem cannot affect the scope of an N-1 carrier's obligation to query calls pursuant to the Commission's rules.

<sup>54</sup> See Reply Comments of Ameritech, filed February 27, 1998, p. 14 in Number Portability Query Services, CC Docket No. 98-14. In addition, even if there were any evidence to support the claim that it is not feasible to perform queries in this fashion, neither SBC, Bell Atlantic, nor any other carrier sought reconsideration of the Commission's adoption of the NANC Process Flows, which, as AT&T shows in the attached Exhibits, clearly contemplate that query charges will begin only after the first number ports in an NXX



Bell Atlantic and SBC's claim of "inefficiency" is equally unavailing. Bell Atlantic rests its argument (p. 8) on its assertion that it will require "three hours' work per NXX" to initiate querying. That figure appears to be wildly inflated, and is wholly unsupported as well. Initiating querying in an NXX is an automated, software-based change -- and a change that should be thoroughly routinized as each BOC will have to repeat it many times. And, once again, SBC and Bell Atlantic cannot deny that Ameritech has stated unambiguously that it will do what they assert cannot reasonably be done.

In all events, even if Bell Atlantic and SBC truly believe that they cannot now implement LNP so as to only query NXXs from which numbers have actually ported, they are free to conduct whatever queries they see fit. As AT&T has repeatedly stated, it "does not believe that the Commission should dictate to carriers how they should introduce LNP into their networks."<sup>55</sup> That uncontroversial fact does not mean, however, that those BOCs may force N-1 carriers to pay for useless queries simply for the privilege of terminating calls to their switches. Accordingly, SBC's dire prediction (p. 21) that "A change at this point would require removal of routing translations for thousands of NXXs in hundreds of switches, only to have to input and test them again when the first number ports" is simply false. SBC need not alter any aspect of its LNP implementation plans except its unlawful proposal to charge other carriers for queries that have no valid purpose.

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<sup>55</sup> Exhibit 3, p. 2.

It is also clear that the fact that SBC or Bell Atlantic may have incurred certain costs in order to implement LNP queries in the illegal manner proposed their tariffs is entirely irrelevant. For example, SBC complains that (p. 25) that querying only NXXs from which numbers have ported "would require fundamental modification to SWBT's and Pacific's billing systems." At bottom, SBC asserts that if, as AT&T believes, SBC planned to implement its LNP query service in an illegal and unreasonable manner, then SBC's competitors should be forced to pay higher query charges in order to hold SBC harmless for this error. That argument is baseless. SBC cannot plausibly contend that it was not aware that many carriers disputed its interpretation of the Commission's LNP rules, or that it was reasonable for it to seek to charge its competitors for a service SBC knew to be useless. As shown above, SBC also had ample notice queries for which it was permitted to bill N-1 carriers by virtue of the Commission's repeated discussions of LNP in its prior orders.

SBC asserts that "The only possible justification for a permanent solution that does not include queries for LNP available NXXs is if CLEC's believe that LNP will not spread across most, if not all, of the portable NXXs in a short period of time."<sup>56</sup> This argument is richly ironic, given that SBC has done so much to frustrate local competition and to prevent CLECs from entering its local markets and thereby utilize LNP. To permit SBC and Bell Atlantic to charge for LNP queries in all NXXs open for portability without regard to whether any CLEC actually has ported a number in that NXX would create a strong disincentive for incumbent LEC monopolists to open their markets to competition, as they could collect charges for unnecessary queries

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<sup>56</sup> SBC, p. 26 (emphasis in original).

without ever permitting CLECs to actually make sufficient market entry to widely utilize LNP.

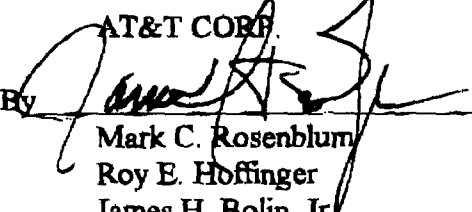
The Commission's LNP rules do not countenance such an anticompetitive result.

Finally, in response to the Designation Order's request (§ 14) for estimates of what the BOCs' LNP query charges would be if they queried only calls to NXXs in which numbers had ported, SBC offers a one-page exhibit, while Bell Atlantic provides no information. Although it is impossible to fully evaluate SBC's Appendix C, since that BOC provides no supporting data or information as to its methodology, it is clear that SBC has sought to improperly inflate its cost estimates. Notes 1 and 2 to Appendix C indicate that SBC has included charges for work necessary to convert its own billing and other systems from their current configuration, in which SBC would charge for queries on all calls to portable NXXs. As AT&T demonstrated above, it would be unreasonable to permit SBC to force other carriers to pay its costs to belatedly amend its systems so as to charge for queries only on calls to NXXs in which numbers had ported.

### CONCLUSION

For the foregoing reasons, the Commission should reject all of the proposed tariffs under investigation in this proceeding, and should direct Ameritech, Bell Atlantic, SWBT and Pacific to re-file their LNP query tariffs with proper supporting data. In addition to declaring the tariffs at issue unlawful, the Commission should resolve the issues addressed in the instant pleading in accord with the arguments offered herein.

Respectfully submitted,

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July 10, 1998

# **AT&T Exhibit 1**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
)

Number Portability Query Services )

CC Docket No. 98-14

Ameritech Tariff F.C.C. No. 2, )  
Transmittal Nos. 1123, 1130 )  
)

CCB/CPD 97-46

Bell Atlantic Tariff F.C.C. No. 1, )  
Transmittal No. 1009 )  
)

CCB/CPD 97-52

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**OPPOSITION TO DIRECT CASES**

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February 20, 1998

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## SUMMARY

The Commission's Designation Order in the instant proceeding found that Ameritech's and Bell Atlantic's LNP query service tariffs failed to provide sufficient cost justification or other support to demonstrate the reasonableness of the charges they proposed. Despite these unequivocal findings, the direct cases offer only halfhearted efforts to justify the tariffed query charges -- efforts which are patently inadequate to carry the RBOCs' burden of proof. The data Ameritech and Bell Atlantic do provide, however, serve to create more questions than they answer, and in many instances reveal significant inconsistencies or flawed assumptions. Accordingly, the Commission should reject Ameritech's and Bell Atlantic's tariffs as unlawful, and direct them to re-file their LNP query service tariffs with proper supporting data.

To the limited extent that Ameritech's and Bell Atlantic's filings do permit meaningful analysis, it is plain that their LNP query tariffs are deeply flawed. First, their tariff filings indicate that both RBOCs intend to charge for unnecessary LNP queries, in direct contravention of the NANC Process Flows adopted in the Commission's LNP Second Report and Order. Both tariffs also improperly use fully distributed, rather than incremental, costs -- contrary to the Commission's prior guidance regarding cost recovery for interim number portability.

Bell Atlantic's tariff impermissibly seeks to allocate costs for modifications to SS7, OSSs, and other systems that are neither caused by, nor related to, LNP query services. In contrast, Ameritech's filing candidly admits that the majority of its systems-related costs to implement LNP are not used to provide or bill LNP query service, and so claims to have excluded those unrelated costs.



Ameritech's tariff estimates that it will require an utterly implausible seven hours per account per month simply to establish an account for billing default LNP queries. Moreover, it proposes to levy this so-called "nonrecurring" charge on N-1 carriers in each and every month that they deliver default traffic to Ameritech's network. In direct contrast, Bell Atlantic does not propose any such explicit "non-recurring" charge for default queries. Ameritech's proposed charge is plainly unreasonable and should be rejected.

Ameritech's and Bell Atlantic's query demand estimates differ wildly, laying bare the uncertainty inherent in predicting LNP query volumes. Such forecasts are, however derived, no more than "best guesses" as to how fast local competition will develop and how many customers will choose to port their numbers. Given the radical uncertainty surrounding query demand forecasting, and the fact that the number of queries one assumes is a major determinant of per query charges, the Commission should approve tariffs for LNP query rates only on a yearly basis, and direct that subsequent year's tariffs be adjusted to reflect over- or undercharging from the previous year.

Finally, the Commission should reject Ameritech's proposal to block prearranged queries that exceed carriers' forecast volumes by more than 125%. Ameritech should not be permitted to require its potential competitors to provide it with forecasts of their anticipated query volumes, and in all events offers no justification for its arbitrary 125% cut-off. More fundamentally, the Commission's LNP Second Report and Order adopted NANC recommendations, arrived at by industry consensus, that simply do not permit carriers to block prearranged queries.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D C. 20554

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In the Matter of	)	
	)	
Number Portability Query Services	)	CC Docket No. 98-14
	)	
Ameritech Tariff F.C.C. No. 2,	)	CCB/CPD 97-46
Transmittal Nos. 1123, 1130	)	
	)	
Bell Atlantic Tariff F.C.C. No. 1,	)	CCB/CPD 97-52
Transmittal No. 1009	)	
_____	)	

**OPPOSITION TO DIRECT CASES**

Pursuant to the January 30, 1998 Order Designating Issues For Investigation ("Designation Order"), AT&T Corp. ("AT&T") hereby opposes the direct cases filed by Ameritech and Bell Atlantic concerning the lawfulness of their long-term number portability query service tariff ("LNP query service") filings. For the reasons discussed below, Ameritech and Bell Atlantic fail even to shoulder -- much less to carry -- their burden of proving that the rates they seek to establish are just and reasonable.<sup>1</sup> What little data these RBOCs do provide merely serves to raise significant doubts as to the validity of their filings. Accordingly, the tariffs at issue should be rejected as unlawful, and

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<sup>1</sup> In this investigation, Ameritech and Bell Atlantic bear the burden of proving that their tariffs are just and reasonable. 47 U.S.C. § 204(a)(1); see also Designation Order, ¶ 9.

Bell Atlantic and Ameritech should be directed to re-file LNP query tariffs with proper supporting data.

I. AMERITECH AND BELL ATLANTIC HAVE CLEARLY FAILED TO MEET THEIR BURDEN OF PROOF

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The Commission's order suspending the instant tariffs found that

Ameritech and Bell Atlantic have not provided sufficient cost justification and other support to demonstrate the reasonableness of the proposed charges and rate structures. For example, Ameritech and Bell Atlantic have not provided a sufficiently detailed explanation of the calculation of their proposed rates in relation to their costs....<sup>2</sup>

Despite this unequivocal conclusion that the RBOCs must come forth with further, more detailed justification for their proposed rates, neither direct case offers either sufficient data to permit the Commission or commenters to evaluate their proposed rates, or meaningful explanations of many of their assumptions or calculations. Bell Atlantic's direct case offers a scant 5 pages of text and a single page of summary figures. Ameritech's direct case, though more prolix, also presents virtually no actual figures to support its claims. The RBOCs' halfhearted efforts are patently inadequate to satisfy the Designation Order's requirement that they "present their costs in terms of the categories the Commission developed," "break investment and expense estimates into these categories," and "identify costs with sufficient specificity to allow the Commission and

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<sup>2</sup> Memorandum Opinion and Order, Petition Of Ameritech To Establish A New Access Tariff Service And Rate Elements Pursuant To Part 69 Of The Commission's Rules, CCB/CPD 97-46, released October 30, 1997, ¶ 18 ("Suspension Order").

other parties to evaluate them."<sup>3</sup> The Commission can and should reject the LNP query tariffs on this basis alone.

The perfunctory nature of the RBOCs' direct cases makes it impossible to test many of their key assertions. The data Ameritech and Bell Atlantic do provide, however, create more questions than they answer. For example:

- A catch-all category of so-called "Other Direct Expenses" accounts for over 82% of the cost of Ameritech's tandem queries, and over 90% of end office queries.<sup>4</sup> Undefined "other expenses" make up 14% of recurring charges for Bell Atlantic's end office queries, and 30% of those charges for tandem and database queries.<sup>5</sup> Neither Ameritech nor Bell Atlantic explains what items are included in these categories.
- Both Bell Atlantic and Ameritech seek to charge significantly higher rates for queries from end offices than from tandem switches, and both assert that this differential is due to increased costs to provide transport from end offices. Neither RBOC explains how its transport costs are calculated, making it impossible to determine the reasonableness of their transport cost assumptions.
- Bell Atlantic assumes a 15% cost of capital, but provides no justification for this figure, which is far higher than is reasonable.<sup>6</sup> In contrast, Ameritech assumes a cost of capital of just 10%.<sup>7</sup>

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<sup>3</sup> Designation Order, ¶ 15.

<sup>4</sup> Ameritech Transmittal No. 1123, Sept. 16, 1997, D&J Ex. 1, pp. 1-2.

<sup>5</sup> Bell Atlantic Transmittal No. 1009, Oct. 30, 1997, Workpapers 7-1 through 7-3.

<sup>6</sup> An appropriate cost of capital rate would be approximately 10%. See, e.g., AT&T ex parte filed December 11, 1997, Federal-State Board On Universal Service, CC Docket 96-45, Hatfield Model Release 5.0, Model Description, p. 60 (deriving cost of capital of 10.01%) ("Hatfield Model Release 5.0 Model Description").

<sup>7</sup> Ameritech's cost of capital rate is computed from the per query investment, depreciation, and cost of money amounts from Ameritech Transmittal No. 1123, D&J Ex. 1, using standard financial calculations. Likewise, Bell Atlantic's 15% cost of capital rate is computed from the per query investment, depreciation, and cost of money amounts in Bell Atlantic Transmittal No. 1009, Workpaper 7-1.

- Both Bell Atlantic and Ameritech appear to calculate depreciation using too short a life -- Bell Atlantic uses approximately 6.4 years, while Ameritech uses approximately 7 years.<sup>8</sup> No explanation is provided for the appropriateness of these depreciation lives. The current version (5.0) of the Hatfield Model does not calculate STP and SCP lives separately, but includes those lives in its digital switching category, which assumes a depreciation life of 16.66 years.<sup>9</sup>
- The single-page attachment to Bell Atlantic's direct case depicts expenses for multiple right-to-use fees as well as STP maintenance and administrative charges. No information is provided as to sources of these charges, which may have been recovered in previous or ongoing state proceedings or may otherwise be improper.
- Ameritech states at page 7 of its direct case that its query rates include "a factor representing the percent [sic] of additional employee related expenses required to provision the query service." However, Ameritech nowhere explains how it calculated this employee expense factor, and it is thus impossible to evaluate its reasonableness.

Moreover, the Suspension Order expressly conditioned its ruling on Ameritech's and Bell Atlantic's compliance with the yet-to-be-established LNP cost recovery rules.

The grant of these petitions [to establish the LNP query rate elements] will be subject to the Commission's determinations in CC Docket No. 95-116. .... We will require Ameritech and Bell Atlantic to conform their rates, rate structures, regulations, and services offered in these tariffs to any determinations made by the Commission in that proceeding.<sup>10</sup>

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<sup>8</sup> Ameritech Transmittal No. 1123, D&J Ex. 1; Bell Atlantic Transmittal No. 1009, Workpapers 7-1 through 7-3.

<sup>9</sup> See Hatfield Model Release 5.0 Model Description, pp. 61. The Hatfield Model determined service lives for 23 categories of equipment "based on their average projection lives adjusted for net salvage value as determined by the three-way meetings (FCC, State Commissions, LEC) for 76 LEC study areas including all of the RBOCs, SNET, Cincinnati Bell, and numerous GTE and United companies." Id., p. 60.

<sup>10</sup> Suspension Order, ¶ 17.

As of the date of this Opposition the LNP cost recovery rules have not been issued.

Accordingly, Bell Atlantic's and Ameritech's tariffs are based on each RBOC's assumptions as to what those rules might require.

It is plain, however, that Bell Atlantic's and Ameritech's conceptions of LNP cost recovery differ widely. For example, Bell Atlantic argues that all of its LNP-related costs to upgrade its SS7, OSS and billing systems should be factored into its query charges, including, inter alia, modifications to ordering systems that will be used to manage the actual porting of numbers, and systems that track maintenance requests from Bell Atlantic customers.<sup>11</sup> In contrast, Ameritech asserts that it included systems-related costs "only to the extent they were necessary for the provision of query service," and so did not include systems changes that related to, e.g., the porting of numbers rather than to querying.<sup>12</sup>

Neither the Commission nor commenters can reasonably hope to fully evaluate the RBOCs' compliance with standards that do not yet exist. This fundamental fact has sweeping implications. Bell Atlantic summarily asserts that its proposed rates include only Type I (shared industry costs of LNP) and Type II (costs directly related to LNP) costs.<sup>13</sup> But at this point, that claim is mere puffing -- the Commission has yet to

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<sup>11</sup> See Bell Atlantic Direct Case, pp. 2-3.

<sup>12</sup> Ameritech Direct Case, p. 5. It also bears noting that SBC proposed a rate of only 0.3 cents for both end office and tandem LNP queries -- which is significantly lower than Ameritech's or Bell Atlantic's proposals, and which contrasts with those RBOCs' suggestion that end office and tandem queries should be priced differently. See SBC Transmittal No. 2638, Tariff F.C.C. No. 73, Section 34.5.

<sup>13</sup> See Bell Atlantic Direct Case, p. 2.

specify what expenses will be deemed "Type II" costs and, as Bell Atlantic well knows, that issue has been hotly disputed in the Commission's cost recovery proceeding. The absence of LNP cost recovery rules makes meaningful evaluation of the instant tariffs impossible. Bell Atlantic and Ameritech can simply assume away almost any objection by hypothesizing that the Commission might allow them to do precisely what they propose.

In sum, Ameritech and Bell Atlantic have provided so little information that the Commission cannot reasonably hope to prescribe appropriate rates for LNP queries based on the record in this proceeding. Given the procedural posture of this matter, the Commission should reject the instant tariffs and order the BOCs to re-file them with proper cost support, in order to protect query purchasers from overcharges.<sup>14</sup>

Neither Bell Atlantic nor Ameritech would be injured by being required to re-file their LNP query service tariffs -- indeed, they have invited that result by opting not to provide the information required by the Designation Order. On the day that direct cases in this investigation were due, SBC and Pacific Bell sought permission to withdraw

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<sup>14</sup> Section 204(a)(2)(A) of the Communications Act requires the Commission to resolve the instant investigation within five months after the date that the LNP query tariffs became effective. That five-month period will have run at the end of March 1998. After that time, Ameritech and Bell Atlantic are likely to contend that the Commission no longer has the power to continue in effect the accounting order established for this proceeding or to order retroactive adjustments to the tariffed LNP query rates, even if those charges are unreasonable or are contrary to its cost recovery rules. Such a result would be both irrational and unjust, as it would deprive carriers that must purchase LNP query services from the instant tariffs of all legal remedies against overcharges. To prevent that result, the Commission should, as shown above, reject the tariffs under investigation in this proceeding and order Ameritech and Bell Atlantic to re-file new LNP query service tariffs.

their existing LNP query tariffs, and indicated that they intended to file new tariffs for those services in March.<sup>15</sup> Meanwhile, U S West, GTE and BellSouth have yet to file LNP query tariffs of any kind. Thus, Bell Atlantic's and Ameritech's fellow ILECs plainly believe that they have sufficient time to get the necessary query-related tariff provisions in place prior to implementation of permanent LNP.

With implementation of long-term LNP scheduled to begin March 31, 1998 in the first round of MSAs, there remains sufficient time for Ameritech and Bell Atlantic to file revised LNP query tariffs. When the BOCs re-file their LNP query tariffs with meaningful data to support them, the Commission should again suspend them for one day and set them for investigation -- an investigation that can be conducted against the framework of the LNP cost recovery rules that the Commission is expected to release imminently.

**II. THE COMMISSION'S LNP ORDERS PROHIBIT CHARGES FOR QUERIES UNLESS A CALL TERMINATES TO AN END OFFICE FROM WHICH AT LEAST ONE NUMBER HAS BEEN PORTED**

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Even if their rates were otherwise properly cost-supported (and, as shown above, they are not) both Ameritech's and Bell Atlantic's tariff filings indicate that those RBOCs intend to charge for unnecessary LNP queries -- a practice that would be facially unreasonable. The NANC Process Flows, which the Commission adopted in the Second

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<sup>15</sup> See Southwestern Bell Telephone Company, Response to Order Designating Issues for Investigation and Motion to Terminate Investigation Order, filed February 13, 1998, p. 2, in Number Portability Query Services, CC Docket No. 98-14; Pacific Bell, Response to Order Designating Issues for Investigation and Motion to Terminate Investigation Order, p. 2, filed February 13, 1998, in id.



Report and Order in its LNP docket, specify that queries need only be performed when at least one number has been ported from an NXX.<sup>16</sup> That is, N-1 carriers are not required to perform queries before delivering a call to an NXX unless a number in that NXX has actually been ported.

Contrary to this requirement, Ameritech's tariff states that

Terminating calls from N-1 carriers upon which a query has not been performed to numbers in the Telephone Company's network with NXX codes that have been designated as portable may require a query to the LNP data base.<sup>17</sup>

Similarly, Bell Atlantic's tariff indicates that queries will be performed for calls "to numbers in the Telephone Company's network with NXX codes that have been designated as portable."<sup>18</sup> Both RBOCs' tariffs thus propose to charge N-1 carriers for queries as soon as an NXX is designated as portable -- that is, as soon as permanent LNP becomes available -- rather than after a number has actually been ported in that NXX. These tariff provisions will require all N-1 carriers to perform unnecessary queries before delivering traffic to Ameritech's or Bell Atlantic's NXXs (if they have that capability, as many N-1

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<sup>16</sup> See North American Numbering Council, Local Number Portability Administration Selection Working Group, LNPA Technical & Operational Requirements Task Force Report, April 25, 1997, Appendix B, Figure 9, (adopted by the Commission in Second Report and Order, Telephone Number Portability, CC Docket No. 95-116, FCC 97-289, released August 18, 1997, ¶ 52 ("LNP Second Report and Order").

<sup>17</sup> Ameritech Transmittal No. 1123, p. 166.4.1 (emphasis added).

<sup>18</sup> Bell Atlantic Transmittal No. 1009, p. 890.19. At a subsequent page of its tariff, Bell Atlantic states that it only will charge for end office queries "to a Directory Number that has been ported out of the Telephone Company donor switch to a recipient switch" -- that is, for calls to numbers that have actually been ported. *Id.*, p. 890.22.